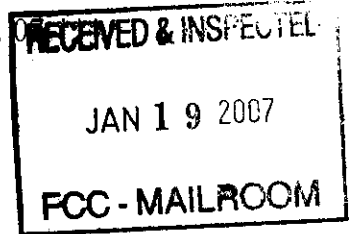


ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In re Amendment of Section 73.202(b))
of the Commission's Rules, Table of Allotments,)
FM Broadcast Stations)
(OVERGAARD, ARIZONA))

MB Docket No. 07-100
RM-*****



To: The Office of the Secretary,
for the Attention of the Assistant Chief, Audio Division, Media Bureau

**PETITION FOR RULE MAKING
AND FOR WAIVER OF FILING FREEZE**

Linda C. Corso (*LCC*), by her communications counsel, hereby asks the FCC to initiate a rule-making proceeding looking toward the substitution of an alternative Channel for the existing allotment of Channel 232C3 to the community of Overgaard, Arizona. LCC files this Petition in connection with two FCC Form 301 applications for minor changes to existing FM Stations:

1. Radio Station KXKQ(FM), licensed to McMurray Communications, Inc., Channel 232C2, Safford, Arizona, FCC Facility ID No. 40916, which seeks to shift to Channel 233C2, and to relicense to Morenci, Arizona (the *KXKQ Proposal*);
2. Radio Station KRDE(FM), licensed to LCC, Channel 231C2, Globe, Arizona, FCC Facility ID No. 37577, which is seeking to upgrade to Channel 231C1, and to relicense to the community of San Carlos, Arizona (the *KRDE Proposal*).

Acceptance of this Petition requires waiver of the filing freeze announced in the Commission's Public Notice, Auction No. 70 Freezes Announced for FM Minor Change Applications and Certain Rulemaking Filings, DA 06-2277 (rel. November 7, 2006). Good cause exists for grant of such a waiver, which waiver LCC hereby requests.

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I. BACKGROUND

1. On November 29, 2006, the FCC released its Report and Order in MB Docket No. 05-210. A summary of the Report and Order appeared in the Federal Register on December 20, 2006. See 71 Fed. Reg. 76208. As a result of the Report and Order, it becomes possible for broadcast radio stations to propose changes in their communities of license by means of Minor-Change Construction Permit applications, if the proposed facilities would be mutually exclusive with their licensed facilities. It also becomes possible for licensees and permittees to file up to four coordinated, mutually dependent applications proposing such changes, pursuant to mutual agreements. January 19 is the first day on which such applications can be filed. All such applications will be subject to the Commission's first-come, first-serve processing regime.

2. Changes to vacant allotments still require the filing of a Petition for Rule Making. Report and Order at para. 16. Related proposals to change communities of license may comprise "pure" groupings of minor-change applications or "hybrid" proposals involving both minor-change applications and rule-making proposals. Id. at para. 17.

3. The KRDE Proposal is short-spaced to the existing, vacant allotment of Channel 232C3 to Overgaard. However, the KRDE Proposal can coexist with the Overgaard allotment if the allotment is shifted to the third-adjacent channel, Channel 235C3, as described herein. Hence, the KRDE Proposal's compliance with FCC spacing requirements requires that LCC file a Petition for Rule Making — this filing. The KRDE Proposal's compliance with FCC spacing requirements also requires that station KXXQ make modifications to its own facilities: migration from Channel 232C2 to Channel 233C2. The KXXQ Proposal entails such migration. Hence, this Petition, LCC's simultaneously filed FCC Form 301 Application for a Minor-Change

Construction Permit, and KXKQ's simultaneously filed FCC Form 301 Application for a Minor-Change Construction Permit, altogether comprise a single hybrid proposal. LCC requests that all three elements be processed simultaneously.

II. ARGUMENT

A. CHANNEL SUBSTITUTION AND CHANGE IN REFERENCE POINT: THE FCC SHOULD SUBSTITUTE CHANNEL 235C2 FOR CHANNEL 232C2 AT OVERGAARD

4. As Exhibit A hereto, the Engineering Statement of Elliott Kurt Klein, LCC's Consulting Engineer, demonstrates, the Commission can substitute Channel 235C3 for Channel 232C3 in full compliance with spacing and city-grade-service requirements, using the following reference point: North Latitude 34° 24' 22"; West Longitude 110° 24' 40". This reference point is 14.5 kilometers East of Overgaard, on a bearing of 93° True, and a direct, unobstructed, line-of-sight path exists between it and the community. Because the city-grade contour of a maximum-parameter Class C3 facility extends 23 kilometers, there is no risk of a shortfall in city-grade coverage of the community of license.

5. The slight adjustment to the existing Overgaard allotment will allow for the relicensing of station KRDE from Globe, Arizona to the community of San Carlos, Arizona, which presently lacks a local service. The relicensing will serve the interests of § 307(b) of the Communications Act of 1934, as amended, by bringing local service to a currently unserved community. Station KRDE's current community of license, Globe, Arizona, currently enjoys local service from three licensed facilities (in addition to KRDE):

- station KJAA(AM), 1240 kHz, FCC Facility ID No. 24161, a full-time Class C station that operates with a transmitter output power of 1,000 watts;

- station KQMR(FM), Channel 262C, FCC Facility ID No. 22977; and
- station KVJC(NCE-FM), Channel 220C2, FCC Facility ID No. 91804.

Globe will also enjoy local service from station KLKA(NCE-FM), Channel 203C1, FCC Facility ID No. 82692, once the facility authorized by Construction Permit BMPED-20060427AAN signs on the air. Thus, the relicensing of station KRDE to San Carlos will result in a more equitable distribution of transmission service, and constitutes a Priority 3 proposal under Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

6. Substitution of Channel 235C2 for the present Channel 232C2 at Overgaard will also allow station KRDE to upgrade to Class C1 status, a significant enhancement in facilities that will allow the station to use the spectrum more efficiently. Spectral efficiency is of “paramount” concern under § 307(b) of the Act. Endicott, New York, 51 FCC 2d 50, 51 (1975).

7. The KXKQ Proposal entails relicensing station KXKQ from Safford, Arizona to Morenci, Arizona. The community of Safford presently enjoys local service from one licensed facility (in addition to KXKQ): station KATO(AM), 1230 kHz, FCC Facility ID No. 40914, a full-time Class C station that operates with a transmitter output power of 1,000 watts. Thus, the relicensing of station KXKQ to Morenci will result in a more equitable distribution of transmission service, and constitutes a Priority 3 proposal under Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

B. WAIVER REQUEST: THE FCC SHOULD GRANT THE WAIVER REQUESTED HEREIN

8. As noted above, the Commission’s November 7, 2006 Public Notice, imposed a filing freeze on allotments sent to auction in Auction No. 70. The short-form application filing

window associated with Auction 70 extended from December 6 through December 20, 2006. At present, the short-form applications are not publicly accessible, so LCC cannot tell whether any applicants have filed for Overgaard, and whether any applicants who did file specified preferred transmitter sites. LCC submits that the Section 307(b) considerations which mandate adoption of the KXKQ Proposal and the KRDE Proposal warrant waiver of the filing freeze imposed by the staff with respect to the Overgaard allotment.

9. As also noted above, minor-change applications, including city-of-license-change proposals filed on or after January 19, 2007, are processed pursuant to a first-come, first-serve regime. This means that applications filed at least one day earlier than any mutually exclusive application will receive primary protection, and that any subsequently filed, mutually exclusive applications will be grouped in a cue behind the lead application. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a Construction Permit is finally granted, at which time the queue dissolves, and the queued applications will be dismissed. 47 C.F.R. § 73.3573(f).

10. Paragraph 17 of the Report and Order requires that all elements of a compound proposal, be it a "pure" proposal or a "hybrid" one, be simultaneously filed. If LCC and the licensee of station KXKQ were to wait for the staff to lift the Auction 70 freeze, they may well be cut off from getting grants due to an earlier filing that does not require amendment to an Auction 70 allotment. And because all simultaneously filed elements of a proposal sink or swim together, 47 C.F.R. § 73.3517(e), waiting for the lifting of the Auction 70 freeze may well doom both the KXKQ Proposal and the KRDE Proposal. Accordingly, the two licensees are

compelled to file their applications on this day, and LCC is compelled to file this Petition on this same day. Accordingly, LCC is compelled to request a waiver of the Auction 70 freeze.

11. Failure to grant the requested waiver will result in LCC and the licensee of station KXXQ from being treated differently from other commercial FM licensees. The Commission cannot treat similarly situated parties disparately without a rational basis. Melody Music, Inc. v. FCC, 345 F.2d 730 (DC Cir. 1965). However, it is clear from Para. 35 of the Report and Order that the Commission intended no disparate treatment: the Commission intended to confer on *all* licensees the ability to avail themselves of the new procedures as of the thirtieth day after Federal Register publication of a summary of the Report and Order:

III. PROCEDURAL MATTERS

35. Lifting of Freeze on New Petitions to Amend the Table of Allotments. In the *NPRM*, we announced a freeze on the filing of new petitions to amend the Table of Allotments, to enable us to complete this proceeding without adding new rule making proceedings that might better be filed under new procedures, and to help eliminate allocations backlogs. We announce that the freeze on filing new petitions to amend the Table of Allotments shall be lifted on the effective date of this *Report and Order*. Because the procedural changes in this *Report and Order* will not become effective until 30 days after publication in the Federal Register, at that time applicants may file minor modification applications for changes to community of license of full-power FM, noncommercial educational FM, and standard-band AM stations. Similarly, applicants wishing to file coordinated, contingent minor change applications and petitions for rule making as discussed at paragraph 17 herein must wait until the new community of license application procedures become effective before filing either minor change applications or rule making petitions.

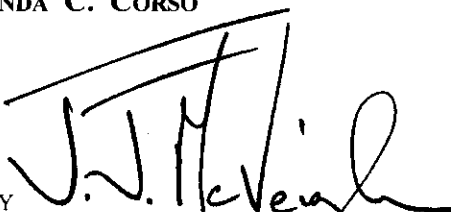
To avoid disparate treatment, and to comport with the Commission's wishes, the staff must waive the Auction 70 freeze, and accept this Petition for filing as of January 19, 2007.

CONCLUSION

12. For all of the above reasons, the staff should promptly issue a Notice of Proposed Rule Making proposing the substitution of Channel 235C2 for the present Channel 232C2 at Overgaard, Arizona, as Linda C. Corso proposes herein.

Respectfully submitted,

LINDA C. CORSO

BY 
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HER COMMUNICATIONS COUNSEL

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COLUMBIA, MARYLAND 21044-2787

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DATE: JANUARY 19, 2007

KLEIN BROADCAST ENGINEERING, L.L.C.

dedicated to improving the science and technology of radio & television communications

January 2007

**ENGINEERING STATEMENT
&
EXHIBIT
PREPARED
IN SUPPORT OF A PETITION FOR RULEMAKING
AT
OVERGAARD, ARIZONA**

The petitioner, Linda C. Corso, requests the Commission substitute FM Channel 235 C3, in place of the existing vacant allotment of FM Channel 232 C3, at Overgaard, Arizona. This FM channel substitution is requested to accommodate a minor change application upgrade for Station KRDE(FM) and its requested change in Principal Community from Globe, Arizona, to San Carlos, Arizona. This allows KRDE(FM) to upgrade to Class C1 on its present assigned channel 231.

FM Channel 235 C3 may be assigned to the Principal Community of Overgaard, Arizona at the following coordinates:

**NL: 34 – 24 – 22 / WL: 110 – 24 – 40
(North American Datum 1927)**

The proposed allotment reference coordinates for FM Channel 235 C3 are fully spaced to all known stations, allotments and proposed allotments in compliance with 47 C.F.R. Section 73.207 of the Commission's Rules and Regulations. The above captioned reference coordinates are located approximately 14.48 kilometers east of the Principal Community, Overgaard, Arizona, on a bearing of 93 degrees true.

ENGINEERING STATEMENT & EXHIBIT cont'd page two: Overgaard, AZ

This is the proposed site restriction for the proposed FM channel substitution at Overgaard, Arizona. This site also provides a direct unobstructed "line of sight" path to the Principal Community, Overgaard, Arizona. The allotment reference coordinates for FM Channel 235 C3 at Overgaard, Arizona, provide a location from which a Class C3 facility would produce a signal the would entirely encompass the Principal Community with the required 70dBu contour from a maximum Class C3 facility (25kW ERP at 100 meters HAAT). The 70dBu contour from such a facility would extend a distance of 23.2 kilometers distant from the proposed allotment site coordinates. The Principal Community, Overgaard, Arizona, is only 14.48 kilometers distant from the proposed allotment coordinates for FM Channel 235 C3.

Attached hereto and made a part of this Engineering Statement is Exhibit E-1, an FCC FM Channel Spacing Study, showing the proposed FM Channel substitution of FM Channel 235 C3 for the existing vacant allotment of FM Channel 232 C3 at Overgaard, Arizona, is clear and fully spaced to all known stations, construction permits, vacant allotments and proposed allotments from the proposed reference coordinates in compliance with 47 C.F.R. Section 73.207 of the Commission's Rules and Regulations as amended to date. The database from which this exhibit was prepared is the FCC CDBS Database of January 15, 2007.

ENGINEERING STATEMENT & EXHIBIT cont'd page three: Overgaard, AZ

Therefore the proposed FM Channel substitution of FM Channel 235 C3 for the vacant allotment of FM Channel 232 C3, may be made at Overgaard, Arizona, in compliance with all applicable Rules and Regulations of the Federal Communications Commission, as amended to date.

**OVERGAARD, ARIZONA 235 C3
 232 C3 Deleted**

The petitioner, Linda C. Corso, respectfully requests the Commission order the proposed FM Channel substitution at Overgaard, Arizona, as proposed.

Respectfully submitted,

**Elliott Kurt Klein,
Consulting Broadcast Engineer**

16 January 2007

Klein Broadcast Engineering, L.L.C.

Job: 235C3 OVERGAARD AZ 73207 20070115.fmj

Master Database: FCC CDBS 2007_Jan_15.fmd

Lat: N34:24:22 Lon: W110:24:40 NAD-27 (PROPOSED ALLOTMENT REFERENCE COORDINATES)

Channel: 235 Class: C3

Status: Licensed, Construction Permit, Application, Addition, Vacant/Reserved

Channels: Co-Channel, 1st Adj, 2nd Adj, 3rd Adj, IF, TV6

Range: 100 km

Comments: No Comments

Description: EXHIBIT E-1 FCC FM CHANNEL SPACING STUDY

Page 1 of 1

Date: 1/16/2007

Callsign	Latitude (NAD27)	Longitude (NAD27)	City	State	ServiChannel	Class	ERP	HAAT	Status	73 207 Min	73 207 Clear	73 215 Min	73 215 Clear	Adjacency	Distance	Bearir
STAT:VA	N34:23:27	W110:33:09	OVERGAARD	AZ	FM 232 : 94.3 MHz	C3	0.00	0	VAC	43	-29.88	37	-23.88	3rd Adj	13.12	263
STAT:VAC	N34:25:53	W110:35:36	HEBER	AZ	FM 288 : 105.5 MHz	C2	0.00	0	VAC	17	0.00	17	0.00	IF	17.00	280
KVIB	N34:14:05	W112:22:02	SUN CITY WE	AZ	FM 236 : 95.1 MHz	C	41.00	849	LIC	176	5.05	165	16.05	1st Adj	181.05	264
KMXZ-FM	N32:14:56	W111:06:59	TUCSON	AZ	FM 235 : 94.9 MHz	C	97.00	595	LIC	237	11.09	226	22.09	Co-Chan	248.09	195
NEW	N34:25:56	W110:35:06	HEBER-OVER	AZ	FM 232 : 94.3 MHz	DX	0.17	0	APP	0	16.25	0	16.25	3rd Adj	16.25	280
STAT:ADD	N35:41:09	W110:21:43	FIRST MESA	AZ	FM 237 : 95.3 MHz	C	0.00	0	ADD	96	46.04	90	52.04	2nd Adj	142.04	002
STAT:ADD	N35:41:09	W110:21:43	FIRST MESA	AZ	FM 237 : 95.3 MHz	C	0.00	0	ADD	96	46.04	90	52.04	2nd Adj	142.04	002
NEW	N34:12:20	W109:56:30	SHOW LOW	AZ	FM 234 : 94.7 MHz	DX	0.02	0	APP	0	48.59	0	48.59	1st Adj	48.59	117
NEW	N34:12:21	W109:56:29	SHOW LOW	AZ	FM 234 : 94.7 MHz	DX	0.25	0	APP	0	48.60	0	48.60	1st Adj	48.60	117
NEW	N34:12:20	W109:56:26	SHOW LOW	AZ	FM 237 : 95.3 MHz	DX	0.01	0	APP	0	48.69	0	48.69	2nd Adj	48.69	117
NEW	N34:12:20	W109:56:26	SHOW LOW	AZ	FM 233 : 94.5 MHz	DX	0.01	0	APP	0	48.69	0	48.69	2nd Adj	48.69	117
NEW	N34:12:20	W109:56:26	SHOW LOW	AZ	FM 232 : 94.3 MHz	DX	0.01	0	APP	0	48.69	0	48.69	3rd Adj	48.69	117
KJNN-LP	N34:52:59	W110:11:39	HOLBROOK	AZ	FM 234 : 94.7 MHz	L1	0.00	0	LIC	0	56.52	0	56.52	1st Adj	56.52	021
NEW	N35:01:25	W110:37:39	WINSLOW	AZ	FM 232 : 94.3 MHz	DX	0.17	0	APP	0	71.31	0	71.31	3rd Adj	71.31	344
NEW	N33:45:37	W109:58:27	WHITERIVER	AZ	FM 232 : 94.3 MHz	DX	0.01	0	APP	0	82.20	0	82.20	3rd Adj	82.20	151
NEW	N33:45:37	W109:58:27	WHITERIVER	AZ	FM 234 : 94.7 MHz	DX	0.01	0	APP	0	82.20	0	82.20	1st Adj	82.20	151
KYOT-FM	N33:20:06	W112:03:39	PHOENIX	AZ	FM 238 : 95.5 MHz	C	96.00	479	LIC	96	97.43	90	103.43	3rd Adj	193.43	232
KOOL-FM	N33:20:02	W112:03:42	PHOENIX	AZ	FM 233 : 94.5 MHz	C	95.60	504	LIC	96	97.57	90	103.57	2nd Adj	193.57	232